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Supreme Court, U.S.
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No. 09-348

IN THE

Supreme Court of the United States

TRADIN ORGANICS USA, INC.,

Plaintiff-Appellant,

- against -

MARYLAND CASUALTY COMPANY,

Defendant-Appellee.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Has Petitioner Tradin Organics USA, Inc. ("Petitioner") presented compelling reasons to grant the Petition where the Second Circuit's affirmance of summary judgment to respondent Maryland Casualty Company ("Maryland") does not conflict with legal precedent or implicates an important federal question?

II. Has Petitioner presented compelling reasons to grant the Petition based on the legally flawed contention that all exclusions in an insurance policy must apply to deny coverage for a loss notwithstanding settled law that exclusions in an insurance policy must be read individually and not collectively?

III. Has Petitioner presented compelling reasons to grant the Petition where Petitioner has conceded that as the seller of the contaminated raspberry crumble, the "your product" exclusion in the Maryland policy applies to deny coverage for the loss?

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent Maryland Casualty Company certifies that Maryland Casualty Company is a wholly owned subsidiary of Zurich American Insurance Company, Schaumburg, Illinois, which is wholly owned by Zurich Holding Company of America. All are owned by Zurich Financial Services Group, a publicly traded corporation based in Zurich, Switzerland. Maryland Casualty Company has no subsidiaries of its own.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6.....ii

INTRODUCTION.....1

STATEMENT OF FACTS.....4

A. THE SALE OF THE RASPBERRYCRUMBLE BY TRADIN TO CROFTER'S.....4

B. THE MARYLAND POLICY.....4

C. TRADIN'S TENDER OF CROFTER'S CLAIM TO MARYLAND.....6

D. TRADIN CONCEDES IT SOLD THE RASPBERRY CRUMBLE TO CROFTER'S.....6

E. THE DECISIONS BELOW.....7

REASONS FOR DENYING THE PETITION.....8

POINT I

THE TIME THAT
THE CONTAMINATION
OCCURRED IS IRRELEVANT.....8

POINT II

AS TRADIN UNDENIABLY SOLD
THE CONTAMINATED RASPBERRY
CRUMBLE THE "YOUR PRODUCT"
EXCLUSION IS FULLY APPLICABLE.....8

POINT III

EXCLUSIONS IN AN
INSURANCE POLICY ARE READ
INDEPENDENTLY AND NOT COLLECTIVELY....12

POINT IV

THE "YOUR WORK" AND "YOUR
PRODUCT" EXCLUSIONS MUST BE
READ/ANALYZED INDEPENDENTLY.....13

POINT V

WHILE THE ISSUE IS
IRRELEVANT, DEN JURO IS
NOT A SUBCONTRACTOR OF TRADIN.....18

CONCLUSION.....21

TABLE OF AUTHORITIES

Cases — Page

Cedar Petrochemicals, Inc. v . Dongbu Hannong Chemical Co., Ltd., 2007 WL 2059239 (S.D.N.Y. 2007).....20

Cogdill v. American General Assurance Company, 2009 WL3261556 (D.S.C. Oct. 8, 2009).....12, 13

Fidelity and Deposit Companyof Maryland v. Hartford Casualty Insurance Company, 189 F.Supp.2d 1212 (D. Kansas 2002).....17

Frontier Insulation Contractors, Inc. v. Merchants Mut. Ins. Co., 91 N.Y.2d 169, 667 N.Y.S.2d 982 (1997).....11

Goodyear Rubber & Supply Co., Inc. v.Great American Insurance Co., 471 F.2d 1343 (9th Cir. 1973).....11

Hartford Accident & Indemnity Co. v. A.P. Reale & Sons, Inc., 228 A.D.2d 935, 644 N.Y.S.2d 442 (3d Dept. 1996).....12

Hartog Rahal Partnership v. American Motorists Ins. Co., 359 F.Supp.2d 331 (S.D.N.Y. 2005).....9

Houseman Construction Company v.
The Cincinnati Casualty Company,
2009 WL 2095994 (W.D. Mich.).....17, 18

J.G.A. Const. Corp. v. Charter Oak Fire Ins. Co.,
66 A.D.2d 315, 414 N.Y.S.2d 385 (4th Dept. 1979).....13

Kanematsu-Goshu Ltd. v.
MIT Messiniaki Aiglie, No. 83 Civ. 530,
1986 WL 751 at 5 n. 3 (S.D.N.Y. 1986).....20

Lowville Producer's Dairy Cooperative,Inc. v.
American Motorists Insurance Co.,
198 A.D.2d 851, 604 N.Y.S.2d 421
(4th Dept. 1993).....9, 10

Maggio v. Leeward Ventures, Ltd.,
939 F.Supp. 1020 (E.D.N.Y. 1996).....20

McCarthy v. Azure,
22 F.3d 351 (1st Cir. 1994).....20

Modern Equipment Co. v.
Cont'l Western Ins. Co., Inc.,
355 F.3d 1125 (8th Cir. 2004).....15

Mowbray v. Moseley,
Hallgarten, Estabrook & Weeden,
795 F.2d 1111 (1st Cir. 1986).....20

Nat'l Union Fire Ins. Co. of
Pittsburgh, Penn. v. Liberty Mut. Ins.
234 Fed. Appx. 190 (5th Cir. 2007).....15

Reston Casualty & Surety Co. v.
Polar Panel Co.,
457 F.2d 957 (8th Cir. 1972).....11

Sampson v. Johnston,
272 A.D.2d 956, 708 N.Y.S.2d 210
(4th Dept. 2000).....12

Sturges Manufacturing Co. v.
Utica Mutual Ins. Co.,
37 N.Y.2d 69, 371 N.Y.S.2d 444 (1975).....11

Synovus Bank of Tampa Bay v.
Valley National Bank,
487 F.Supp.2d 360 (S.D.N.Y. 2007).....19, 20

Todd Shipyards Corporation v.
Turbine Service, Inc.,
674 F.Supp. 401 (5th Cir. 1982).....10, 11

United Capitol Insurance Company v.
Special Trucks, Inc.,
918 F.Supp 1250 (N.D. Ind. 1996).....14

United National Insurance Company v.
Hydro Tank, Inc.,
497 F.3d 445 (5th Cir. 2007).....13

Wanzek Construction Inc. v.
Employers Insurance of Wausau,
679 N.W.2d 322 (2004).....16, 17, 18

Watts Industries, Inc. v.
Zurich American Ins. Co.,
121 Cal.App. 4th 1029, 18 Cal.Rptr.3d 61
(2d Dist. 2004).....10

Weedo v. Stone E-Brick, Inc.,
81 N.J. 233, 405 A.2d 785 (N.J. 1979).....13

Zandri Construction Co., Inc. v.
Firemen's Insurance Co. of Newark,
81 A.D.2d 106, 440 N.Y.S.2d 353 (3d Dept. 1981)..12

Zandri Construction Co., Inc. v.
Stanley H. Culkin,
54 N.Y.2d 999, 446 N.Y.S.2d 45 (1981).....12

Treatises

Henderson Insurance Protection for Products Liability and
Completed Operations: What Every Lawyer Should Know,
50 Neb. Rev. 415 (1971).....16

New York Pattern Jury Instructions
Section 4:45 at p. 839 (2007).....12

INTRODUCTION

Petitioner Tradin Organics USA, Inc. ("Petitioner" or "Tradin") has presented no compelling reasons for this Court to grant the Petition for Writ of Certiorari. See Supreme Court Rule 10. Specifically, Tradin has failed to demonstrate that the Second Circuit's Summary Order dated April 16, 2009, is in conflict with a decision of this Court, another Court of Appeals, the Second Circuit or decided an important federal question not settled by this Court. See Supreme Court Rule 10(a) and (c). In fact, Petitioner, which does not cite to a single Court of Appeals decision in its Brief, let alone any precedent on point, has not even carried its less strenuous burden of showing any basis in law to consider the Petition.

Tradin's complaint sought $214,442.43 from its insurer Maryland for a loss incurred as a result of Tradin's sale of a defective product (raspberry crumble) to a third party Crofter's Food, Ltd. ("Crofter's"). Maryland denied coverage because loss fell squarely within the business risk exclusion in the Maryland policy (the "Maryland Policy") for losses arising from property damage to an insured's own product. The "your product" exclusion applied because Tradin was the undisputed seller of the contaminated raspberry crumble. Tradin acknowledges the "your product" exclusion bars coverage for the loss. Tradin contends it is entitled to coverage because the damages arose out of work performed by a subcontractor, Den Juro, and the claim therefore falls within the subcontractor exception to a separate "your work" exclusion in the Maryland Policy. Apart from the fact that Den Juro was not Tradin's subcontractor, Tradin's relationship

with Den Juro and the potential applicability of "your work" exclusion are irrelevant because coverage is in any event excluded under the "your product" exclusion.

On this Petition, Tradin has raised a new contention not raised below that because the contamination occurred when the product was in Den Juro's possession, the loss is subject to the subcontractor exception to the "your work" exclusion. Tradin's assertion that the timing of the contamination is somehow determinative of coverage is devoid of merit. Tradin cites not a single case which supports this dubious proposition, and none exists. No dispute exists that Tradin sold a contaminated product that required recall. That fact is dispositive as to the coverage. The purpose of Maryland's liability policy was to protect Tradin in the event its product caused damage to third parties. It is not a performance bond guarantying the quality of Tradin's product. Overwhelming case law throughout the country so holds.

Tradin's efforts to show ambiguity exists between the "your work" and "your product" exclusions is unsupported by any legal authority or the facts of this case. The two cases Tradin cites involved damage to a structure on land. The courts found the "your product" exclusion inapplicable because of the exception for "real property" within the "your product" exclusion. Undisputably, Tradin sold a damaged food product, not real property.

In continuing to deem Den Juro's status relevant, Tradin's Petition shows a complete misunderstanding of the policy's business risk exclusions and the law construing those exclusions. It is well settled that exclusions are to be read

individually, not collectively. If any one policy exclusion applies, coverage is not afforded. Tradin has conceded the "your product" exclusion applies. As a result, the predicates of the "your work" exclusion are of no consequence.

STATEMENT OF FACTS

A. The Sale of the Raspberry Crumble by Tradin to Crofter's

In July 2003, Crofter's Food, Ltd. and Tradin entered into a contract (the "Crofter's Contract") whereby Crofter's agreed to purchase certain organic foods including a product known as raspberry crumble. To fulfill the Crofter's Contract, Tradin's parent Tradin Organic Agriculture B/V ("B/V") purchased fruit products from a grower Den Juro, located in Beograd, Serbia. Tradin then purchased the raspberry crumble from B/V. Without question, B/V is not an insured under the Maryland Policy.

Tradin satisfied the Crofter's Contract and sold the raspberry crumble. The Crofter's Contract identifies Tradin as the seller and Crofter's as the buyer. Crofter's took possession of the raspberry crumble and sold it to various retail food establishments in Canada.

In or about March 2004, Crofter's learned the raspberry crumble was contaminated with foreign objects including glass and plastic. As a result, the Canadian government ordered Crofter's to recall the raspberry crumble. Crofter's demanded reimbursement from Tradin for the purchase price of the raspberry crumble.

B. The Maryland Policy

Maryland issued policy no. PAS36242205 issued to Tradin Organics for the period April 17, 2004 until nonrenewed/cancelled (the "Maryland

Policy"). The Policy contains the following business risk provision/exclusion:

> k. **Damage to Your Product**
>
> "Property damage" to "your product" arising out of it or any part of it.

Under the Policy "your product" means:

> a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
>
> (1) You;
>
> (2) Others trading under your name; or
>
> (3) A person or organization whose business or assets you have acquired;...
>
> "Your product" includes:
>
> (a) Warranties or representations made at any time with

> respect to the fitness, quality, durability, performance or use of "your product".

C. Tradin's Tender of Crofter's Claim to Maryland

After receiving notification from Crofter's in March 2004 of the contamination and recall of the product, Tradin's insurance broker The Proctor Agency ("Proctor") placed Maryland on notice of the loss. Proctor forwarded the recall notice, Crofter's demand letter and damages spreadsheet to Maryland in or about May 2004. By letter dated May 11, 2004, Maryland denied coverage to Tradin for the loss. Maryland relied on several exclusions in the Policy including the exclusion for property damage to "your product."

D. Tradin Concedes It Sold the Raspberry Crumble to Crofter's

In the courts below, Tradin admitted it was in the business of importing organic fruit products and sold the contaminated raspberry crumble to Crofter's. Both principals of Tradin in the relevant timeframe, Steven Snyder and Gerard Versteeghe, stated repeatedly at deposition that Tradin sold the raspberry crumble to Crofter's.

E. The Decisions Below

The United States District Court for the Southern District of New York granted Maryland summary judgment holding that the claim was excluded from coverage under the policy's "your product" exclusion. The United States Court of Appeals for the Second Circuit issued a summary order of affirmance. Neither decision is officially published.

REASONS FOR DENYING THE PETITION

POINT I

THE TIME THAT THE CONTAMINATION OCCURRED IS IRRELEVANT

Tradin's claim that because the product became contaminated when in the possession of Den Juro, the exception to "your work" exclusions applies is patently lacking in merit. Tradin sold a contaminated or compromised product which caused damages to the buyer Crofter's. When the contamination occurred is of no legal moment. Tradin has failed to identify a single case which holds the time of contamination is the deciding factor for coverage under the "your product" exclusion. The cases cited by Maryland infra, that apply the "your product" exclusion identify product damage at various intervals. None of those cases found the time of the contamination a relevant factor in the coverage analysis. Rather, the operative issue is that the insured sold a defective product.

POINT II

AS TRADIN UNDENIABLY SOLD THE CONTAMINATED RASPBERRY CRUMBLE, THE "YOUR PRODUCT" EXCLUSION IS FULLY APPLICABLE

The application of the "your product" exclusion to Tradin's claim for coverage is aptly illustrated in the two primary cases relied upon by the Second Circuit and District Court. In a strikingly similar

case, Hartog Rahal Partnership v. American Motorists Ins. Co., 359 F.Supp.2d 331 (S.D.N.Y. 2005), Hartog sold apple juice concentrate to prominent food manufacturers such as Smucker's and Tropicana. Apparently, the concentrate contained an artificial sweetener which rendered the product unsaleable. Hartog negotiated settlements with the manufacturers of the product including the price paid for the concentrate. Hartog then sought recovery of $814,350.57, the value of the concentrate sold to the manufacturers, from Kemper Insurance Company ("Kemper"). Kemper refused to reimburse Hartog for the cost of the concentrate citing the exclusion in its policy for "property damage to 'your product' arising out of or any part of it". (Id. at p. 332).

The district court granted Kemper summary judgment and held Hartog's claim fell precisely within the "your product" exclusion. No dispute existed that Hartog sold the concentrate and the recovery sought was for the cost of the product the purchasers paid to Hartog and for which Hartog reimbursed. In denying coverage, the court reasoned the Kemper policy was a "liability policy, not a performance bond". (Id. at p. 332). The same analysis applies here.

A seminal case on the "your product" exclusion is Lowville Producer's Dairy Cooperative, Inc. v. American Motorists Insurance Co., 198 A.D.2d 851, 604 N.Y.S.2d 421 (4th Dept. 1993). In Lowville, a cooperative association of dairy farmers supplied milk to a cheese manufacturing plant operated by Kraft Foods. Apparently, a dead mouse was trapped in a filter hose leading from a Lowville truck into one of Kraft's silos. Kraft determined the milk was contaminated and rejected the entire shipment.

Lowville's insurance carrier denied the insured's claim to cover the loss of the milk itself invoking the "your product" exclusion in the policy. Finding no coverage for the loss, the Lowville Court wrote that the exclusion:

> is intended to exclude coverage for damages to the insured's product, but not for damage caused by the insured's product to persons or property other than the insured's own product ... The policy was clearly intended to cover the possibility that the insured's product, once sold, would cause ... damage to property other than the product itself ... . The risk that the insured be required to make good on its warranty of quality was a contractual or commercial risk that defendant [insurer] did not intend to insure ... . It is a liability policy, not a performance bond.

(Id. at pp. 423-424).

Other courts around the country have reached similar holdings. See Watts Industries, Inc. v. Zurich American Ins. Co., 121 Cal.App. 4th 1029, 18 Cal.Rptr.3d 61 (2d Dist. 2004); see also Todd

Shipyards Corp. v. Turbine Service, Inc., 674 F.2d 401 (5th Cir. 1982); Goodyear Rubber & Supply Co., Inc. v. Great American Insurance Co., 471 F.2d 1343 (9th Cir. 1973); Reston Casualty & Surety Co. v. Polar Panel Co., 457 F.2d 957 (8th Cir. 1972); Sturges Manufacturing Co. v. Utica Mutual Ins. Co., 37 N.Y.2d 69, 371 N.Y.S.2d 444 (1975).

The Second Circuit correctly held that the instant action is on all fours with the above precedent and warrants the same result. It is uncontested that Tradin was both a handler and seller of the raspberry crumble. See e.g., Frontier Insulation Contractors, Inc. v. Merchants Mut. Ins. Co., 91 N.Y.2d 169, 667 N.Y.S.2d 982 (1997) (New York Court of Appeals held the term "handle" does not have to refer to touching the product in connection with the "your product" exclusion. The term "handle" used with the words "manufacturer" and "seller" in the same clause should be given a commercial connotation and construed to refer to products in which the insureds trades or deals). Tradin is a purveyor of organic food products and sent the contaminated raspberry crumble into the stream of commerce. See Todd Shipyards Corporation v. Turbine Service, Inc., 674 F.Supp. 401 (5th Cir. 1982) (stating the handling of goods and products means to "deal" or "trade in" rather than to "touch"). Here, Tradin seeks to recover its reimbursement to Crofter's for selling tainted raspberry crumble. Longstanding principles of insurance law reject such a claim.

POINT III
EXCLUSIONS IN AN INSURANCE POLICY ARE READ INDEPENDENTLY AND NOT COLLECTIVELY

Tradin admits that its loss is within the ambit of the "your product" business risk exclusion in the Maryland Policy. Tradin's contention that all exclusions cited in Maryland's disclaimer letter or Policy and more specifically the "your work" exclusion must apply or none apply is unsupported by a single case or insurance treatise. In fact, the opposite is true: Any one exclusion operative under a policy permits the insurer to deny coverage. To accept Tradin's novel rationale would encourage insurers not to list exclusions in a disclaimer or its policy because if any exclusion does not apply, then coverage would be found.

It has long been the rule that exclusions must be read seriatim and not cumulatively. If any one exclusion applies, no coverage exists in an insurance policy. See Zandri Construction Co., Inc. v. Firemen's Insurance Co. of Newark, 81 A.D.2d 106, 440 N.Y.S.2d 353 (3d Dept. 1981); Zandri Construction Co., Inc. v. Stanley H. Culkin, 54 N.Y.2d 999, 446 N.Y.S.2d 45 (1981); Sampson v. Johnston, 272 A.D.2d 956, 708 N.Y.S.2d 210 (4th Dept. 2000); Sampson v. Johnston, 272 A.D.2d 956, 708 N.Y.S.2d 210 (4th Dept. 2000); Hartford Accident & Indemnity Co. v. A.P. Reale & Sons, Inc., 228 A.D.2d 935, 644 N.Y.S.2d 442 (3d Dept. 1996); see also New York Pattern Jury Instructions Section 4:45 at p. 839 (2007).

A recent District Court decision relied upon this well-entrenched rule in finding in favor of an insurer. See Cogdill v. American General Assurance

Company, 2009 WL3261556 (D.S.C. Oct. 8, 2009) (holding that if any individual exclusion in an insurance policy bars a claim, it will operate to preclude recovery of benefits by the insured regardless of the contents of any other exclusions); see United National Insurance Company v. Hydro Tank, Inc., 497 F.3d 445 (5th Cir. 2007) (exclusions are read independently and not collectively); see also Weedo v. Stone E-Brick, Inc., 81 N.J. 233, 405 A.2d 785 (N.J. 1979) (if any one exclusion applies, there is no coverage).

The Maryland Policy lists sixteen different exclusions which, if applicable, act to deny coverage. Each exclusion must be considered independent of another. J.G.A. Const. Corp. v. Charter Oak Fire Ins. Co., 66 A.D.2d 315, 414 N.Y.S.2d 385 (4th Dept. 1979) is instructive. In J.G.A., the court found the "your work" exclusion inapplicable because the defective construction was performed by a subcontractor of the named insured's general contractor. Nevertheless, the court held in favor of the insurer on the grounds the "your product" exclusion applied. Tradin has failed to address, let alone rebut this basic precept of insurance contract law.

POINT IV

THE "YOUR WORK" AND "YOUR PRODUCT" EXCLUSIONS MUST BE READ/ANALYZED INDEPENDENTLY

Tradin's effort to create ambiguity between the "your product" and "your work" exclusions is meritless. The federal courts have rejected attempts

by an insured seller of a defective product to circumvent the "your product" exclusion by arguing the damage arose out of a subcontractor's work. See United Capitol Insurance Company v. Special Trucks, Inc., 918 F.Supp 1250 (N.D. Ind. 1996). In United Capitol, the insured Special Trucks manufactured a truck chassis sold to Pacific Utility. The truck crashed and damaged the chassis. Pacific sued Special Trucks claiming the crash damage was the result of a faulty wheel placed on the truck by Special Trucks. United Capitol denied coverage to Special Trucks based on the "your product" exclusion. That is, Special Trucks manufactured and sold the truck chassis. Special Trucks claimed the wheel that broke and caused the accident was purchased from a third-party vendor (FIC, Inc.) and that vendor constituted a subcontractor. Thus, Special Trucks claimed the exception to the "your work" exclusion applied to afford coverage. The district court rejected Special Trucks' argument and found for United Capitol.

The United Capitol court first dismissed Special Trucks' claim that the terms "work" and "product" are synonymous and can be applied interchangeably. The court held no case expressly holds that the two exclusions are essentially read as one or the presence of both in an insurance policy creates an ambiguity. (Id. at p. 1256.)

The United Capitol also differentiated between the terms "work" and "product". The term "work" refers to the negligent or incorrect manner in which a job is done. "Product" means that the item made or sold is somehow itself defective or deficient. Utilizing these definitions in this case, Tradin did not perform any work on the raspberry crumble. At most, Den Juro was a vendor that supplied the product to B/V.

Tradin sold defective product for which Crofter's sought to recover its contract price. This is a pure economic claim. As one commentator has succinctly explained:

> The risk intended to by insured is the possibility that the goods, products or work of the insured, once relinquished or completed, will cause bodily injury or damage to property other than to the product or completed work itself and for which the insured may be found liable. The coverage is for tort liability for physical damages to others and not for contractual liability of the insured for economic work because the product or completed work is not that for which the damaged person bargained.

Henderson Insurance Protection for Products Liability and Completed Operations: What Every Lawyer Should Know, 50 Neb. Rev. 415, 441 (1971). Other circuit courts are in accord. See also Nat'l Union Fire Ins. Co. of Pittsburgh, Penn. V. Liberty Mut. Ins. 234 Fed. Appx. 190 (5th Cir. 2007); Modern Equipment Co. v. Cont'l Western Ins. Co., Inc., 355 F.3d 1125, 1129, 1131 (8th Cir. 2004).

The precedent Tradin relies upon in its Petition does not support an ambiguity argument. Most compelling, Tradin has not identified a single case which has deemed the "your product" exclusion ambiguous. Rather, Tradin's cases held that an ambiguity existed solely in the "your work" exclusion due to the lack of a definition of "subcontractor" under the exception to that exclusion. For example, in Wanzek Construction Inc. v. Employers Insurance of Wausau, 679 N.W.2d 322 (2004), Wanzek was a general contractor for construction of a municipal swimming pool. Wanzek incurred damages in replacing the pool's coping stones manufactured by a subcontractor Aquatic Designs, Inc. ("Aquatic"). Wanzek sought coverage from Wausau for costs incurred. Wausau denied coverage citing the "your work" and "your product" business risk exclusions in the Wausau policy. The Minnesota Supreme Court held that Aquatic fulfilled the subcontractor exception to the "your work" exclusion and conferred coverage on Wanzek.

The Wanzek court rejected Wausau's reliance on the "your product" and "your work" exclusions based upon the exceptions to each exclusion rather than ambiguity or tension between the exclusions. Wanzek found the "your product" exclusion did not apply because the policy defined "your product" as "any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by...you". (Emphasis supplied). Wanzek erected a swimming pool on land. For this reason, the Wanzek court deemed the "your product" exclusion inapplicable. In stark contrast, the contaminated raspberry crumble sold by Tradin is not real property under any circumstance. Thus, the real property

exception in the "your product" exclusion of the Maryland Policy has no relevance.

Wanzek also declined to apply the "your work" exclusion because Aquatic qualified as a subcontractor within the meaning of the exception to the exclusion. Wanzek reasoned the "your work" exclusion ambiguous because the Wausau policy did not define a subcontractor. Wanzek thus held that where a supplier custom fabricates materials to an owner's specifications and provides onsite services in connection with the installation, the supplier meets the definition of subcontractor under the exception to the "your work" exclusion. As the "your work" exclusion is of no import at bar, the ambiguity finding in Wanzek is not probative.

Tradin's citation in passing to Fidelity and Deposit Company of Maryland v. Hartford Casualty Insurance Company, 189 F.Supp.2d 1212 (D. Kansas 2002) is at best puzzling. Fidelity did not address the "your product" exclusion or find any ambiguity exists between the "your product" and "your work" exclusions.

Tradin's reliance on Houseman Construction Company v. The Cincinnati Casualty Company, 2009 WL 2095994 (W.D. Mich.) is similarly misplaced. In fact, the block quote from Houseman incorporated verbatim in Tradin's Petition is from another case cited within Houseman. Tradin has further not apprised this Court of the actual facts in Houseman. Houseman was the general contractor in construction of a grocery store. Several years after construction was completed, structural defects in the construction caused the foundation to sink. Houseman was sued for damages. Houseman sought coverage from Cincinnati Casualty Company ("Cincinnati").

Cincinnati asserted no duty to defend or indemnify because the damages arose solely from Houseman's own work product. Houseman relied on the "your product" exclusion and "your work" exclusions.

The Houseman Court found the "your product" did not apply because of the real property exception. Real property includes both land and fixtures. The grocery store Houseman erected - real property - was excluded from the definition of "your product".

Evidence existed in Houseman that the store was constructed by subcontractors. The Houseman court thus held the "your work" exclusion did not apply because of the subcontractor exception. Houseman similar to Wanzek did not find any ambiguity between the "your product" or "your work" exclusions. Rather, the "your product" exclusion did not apply due to the real property exception. At bar, the raspberry crumble is neither land, a fixture, a swimming pool nor a grocery store. The crumble is a food product. Tradin sold this food product in a contaminated state, and the resulting claim for recall expenses is therefore excluded.

POINT V
WHILE THE ISSUE IS IRRELEVANT, DEN JURO IS NOT A SUBCONTRACTOR OF TRADIN

This case falls squarely within the "your product' exclusion to the Maryland Policy. Maryland thus asserts it is unnecessary to determine whether Den Juro was Tradin's subcontractor because the "your product" exclusion is unequivocal in its intent and applied to deny coverage to Tradin. The courts below recognized that Den Juro's relationship to

Tradin is academic because the "your product" exclusion, one of sixteen exclusions in the Policy, applied to deny coverage to Tradin. As Tradin's petition however explicitly and erroneously contends that Den Juro was Tradin's subcontractor, Maryland is compelled to refute this unsupportable claim.

To begin with, Tradin has no contractual privity with Den Juro. In actuality, the master contract created contemporaneously with the raspberry crumble transaction, No. 20/14418 #2, is between B/V as "Buyer" and Den Juro as "Seller". The "Application – Form Import – or Transaction Certificate" solely list B/V as Buyer and Den Juro as Seller. B/V purchased and paid for the crumble. Den Juro delivered the product to B/V. Tradin Organics and B/V then entered into separate contracts. Den Juro is not a party to or even mentioned in B/V's contracts with Tradin Organics.

B/V and Tradin are separate companies. Tradin made the settlement payment to Crofter's. B/V is not an insured under the Maryland Policy. Tradin's perceived contractual relationship with Den Juro is wholly lacking in merit.

Nowhere in the Den Juro/BV contract is Tradin listed as an intended third-party beneficiary. The following factors are required to establish third-party beneficiary status: (i) the existence of a valid and binding contract between other parties; (ii) that the contract was intended for his or her benefit; and, (iii) that the benefit to him or her is sufficiently immediate rather than incidental to indicate the assumption by the contracting parties of a duty to compensate him in the benefit is lost. Synovus Bank of Tampa Bay v. Valley National Bank, 487

F.Supp.2d 360, 368 (S.D.N.Y. 2007). Tradin cannot satisfy these criteria as a matter of law.

Undeniably, Tradin is nowhere listed in the Den Juro contract. B/V contracted and paid for the product. Den Juro delivered the product to B/V. B/V arranged for the shipping to Crofter's. To the extent Tradin incurred any damages, its recovery is against B/V. Further proof of Tradin's contrived claim is that upon learning of Crofter's claim, B/V and not Tradin sent demand letters to Den Juro. B/V settled with Den Juro to credit future B/V invoices as a set off for the Crofter's loss.

At most, Tradin was an incidental beneficiary. The courts hold that a third party is not a beneficiary of a sales agreement merely because both contracting parties knew the product would be resold to a third party. Cedar Petrochemicals, Inc. v. Dongbu Hannong Chemical Co., Ltd., 2007 WL 2059239 (S.D.N.Y. 2007); McCarthy v. Azure, 22 F.3d 351 (1st Cir. 1994) (person aspiring to such status must show with special clarity that the contracting parties intended to confer a benefit on him). While a remote purchaser such as Tradin may be an incidental beneficiary of the initial sales contract, it is not a third-party beneficiary absent proof that the parties intended to accord it such status. See Kanematsu-Goshu Ltd. V. MIT Messiniaki Aiglie, No. 83 Civ. 530, 1986 WL 751 at 5 n. 3 (S.D.N.Y. 1986); Mowbray v. Moseley, Hallgarten, Estabrook & Weeden, 795 F.2d 1111, 1117 (1st Cir. 1986). Tradin has made no such showing. Further, a remedy for Den Juro's breach as promisor was not confined to Tradin. Rather, B/V could and did recover the benefit of the bargain from Den Juro. See Maggio v. Leeward Ventures, Ltd., 939 F.Supp. 1020 (E.D.N.Y. 1996) (third-party beneficiary

rights only where it appears that no party other than third party can recover if promisor breaches the contract).

CONCLUSION

Petitioner has not established any compelling reason for this Court to grant the Petition. Maryland respectfully requests this Court deny the Petition.

Respectfully submitted,
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